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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,646	07/23/2003	Tiecheng A. Qiao	85505KNM	9727

7590 04/18/2007  
Paul A. Leipold  
Patent Legal Staff  
Eastman Kodak Company  
343 State Street  
Rochester, NY 14650-2201

EXAMINER
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GROSS, CHRISTOPHER M

ART UNIT	PAPER NUMBER
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1639

MAIL DATE	DELIVERY MODE
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04/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/625,646

Applicant(s)

QIAO ET AL.

Examiner

Christopher M. Gross

Art Unit

1639

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 04 April 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-16 and 28.  
Claim(s) withdrawn from consideration: 17-27.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

JON EPPERSON  
PRIMARY EXAMINER

**ADVISORY ACTION**

**Continuation of 3**

In accordance with MPEP 803.02, should applicant overcome a rejection - by amending a claim - to exclude species anticipated or rendered obvious by the prior art, the search concerning amended claims will need to be extended to the extent necessary to determine patentability. Said search extension constitutes a additional consideration and/or search. See MPEP 714.13. Here, the proposed amendment filed 3/8/2007 limiting the support to a 'protein microarray support' and 'wherein the adhesive interlayer does not optically interfere with protein microarray applications' requires further search and consideration.

Furthermore, there is no reason why the proposed amendments were not presented earlier in prosecution. See 37 CFR 1.116 (b)(3).

In light of the fact that the proposed amendments, filed 3/8/2007, after final rejection will not be entered, Applicant's arguments filed 3/8/2007 (see p 6-34) are rendered moot.

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Nevertheless, in order to expedite future prosecution of the present application, the following comments are noted. The proposed amendments appear likely to be sufficient to overcome 35 USC 102 rejections over Dorogushin et al (Soviet Union Patent SU308662) and Himmelmann et al (US Patent 3480431). However, it does not appear that insertion of 'a protein microarray support' would overcome Bauer et al (US

Art Unit: 1639

Patent 5639589) because according to p 5 line 10 of the present specification, plastic is a commonly used support for protein microarrays and Bauer teach both polyester or polyethylene (i.e. plastic) films.

In so far as optical interference is concerned, Applicant's counsel argues that the adhesive layer according to Bauer et al will optically interfere with protein microarray applications, however counsel does not provide objective evidence establishing this as a fact, through a CFR 1.132 declaration or other reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Gross whose telephone number is (571)272-4446. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Douglas Schultz can be reached on 571 272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher M Gross  
Examiner  
Art Unit 1639

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JON EPPERSON  
PRIMARY EXAMINER

